CASE SUMMARY

Complaint against Buildings Department for impropriety in handling the maintenance of the external walls of a Building

The Complaint

The complainant, on behalf of several flat owners of a building (the Building), complained against Buildings Department (BD) for:

(a) issuing letters to the Owners' Corporation (OC) requesting for maintenance without verifying the ownership of the external walls such that the owners had to share the costs, and that made them feel aggrieved; and

(b) failing to reply to the enquiry letters on the ownership of the external walls in question and the maintenance responsibility.

Sequence of Events

2. The Building was over 30 years old and required maintenance from time to time. In late 1999, BD informed the OC in writing (the first advisory letter) requesting for maintenance of its external walls and common areas and also the appointment of an authorized person to co-ordinate the works. Some of the owners wrote to BD to enquire into the ownership and maintenance responsibility of the external walls but received no reply.

3. In late 2000, BD wrote to the OC again indicating that the Building had been included in the Co-ordinated Maintenance of Buildings Scheme as one of the target buildings. In February 2001, BD issued to the OC the second advisory letter.

4. In June 2001, the complainant wrote twice to BD with copies of the Deed of Mutual Covenant of the Building and the title deed of the external walls. In October 2001, BD wrote to the company that owned part of the external walls and requested it to liaise with the OC to carry out maintenance works on the external walls.

5. In January 2002, BD sought legal advice in respect of the disputes arisen from the ownership of the external walls and learnt that advisory letters should be issued to the party who owned part of the external walls.

6. In March 2002, BD replied the complainant with an apology. In May 2002, the complainant wrote to BD again to express his dissatisfaction with its reply. BD issued another letter to him in July to express its apology again for failing to reply to his letter earlier.

7. In mid-March 2002, the authorized person submitted a certificate on completion of building works to BD and issue of a repair order to the OC was not necessary.

Observations and Opinions

Complaint point (a)

8. BD's working guidelines and procedures did not require its staff to verify the ownership of a building before issuing advisory letters. Hence, BD issued the first and second advisory letters to the OC in accordance with such established practices.

9. According to BD's record, when it issued a statutory repair order to the Building in 1986, it had verified the ownership and learnt that part of the external walls was privately owned. In fact, BD received enquiries on the ownership of the external walls in April 2000 and June 2001 respectively. However, it failed to make any positive response.

10. This Office considered that when it was shown that part of the external walls was privately owned, BD should not have included the whole maintenance responsibility in its advisory letters to the OC; otherwise, it resulted in the misunderstanding of the OC and all owners that they had to shoulder the entire maintenance responsibility and costs of the external walls (including the part privately owned). It made the OC and the owners feel that there was confusion, partiality, and unfairness in the handling of the case on the part of BD.

11. Therefore, BD should take into account circumstances of the case and be flexible to clarify the distribution of ownership, instead of following the established procedures without paying attention to the actual circumstances.

12. This Office considers complaint point (a) **partially substantiated**.

Complaint point (b)

13. BD's internal guidelines require that a reply or interim reply should be given to the public within ten working days upon receipt of their written enquiries. A formal reply with detailed explanation should subsequently be given to the public. However, BD only replied the complainant after a lapse of nine months. His dissatisfaction was totally understandable.

14. After the OC had appointed an authorized person to co-ordinate the works, BD considered that the problem had been resolved. We considered such approach inappropriate. In handling public enquiries or complaints, government departments should adopt a serious and conscientious attitude.

15. This Office considers complaint point (b) **substantiated**.

Conclusion

16. On the whole, The Ombudsman considers the case **partially substantiated**.

Recommendations

17. The Ombudsman makes the following recommendations to the Director of Buildings:

(a) to review the existing guidelines regarding verification of ownership before issuing advisory letters, except in cases of emergency, to ensure that the recipients are the owners concerned; and

(b) to strengthen instructions to staff, requiring them to strictly adhere to its internal guidelines and give replies or interim replies to public enquiries within the specified time; elaborating on the follow-up actions in their formal replies.

Response from BD

18. (a) As the first and the second advisory letters were not statutory orders, it was not necessary for BD to go into details and verify the ownership.

(b) The complainant and the OC submitted a lot of information when they enquired about the ownership of the external walls. It indicated that they had certain knowledge about the ownership of the external walls. They should discuss and resolve amongst themselves the maintenance responsibility and sharing of maintenance costs. In addition, BD had given interim replies in response to the complainant's first and second letters within ten days and sent him a formal reply in March 2002.

(c) BD did not agree that the complaint was **partially substantiated**. However, BD would review its existing internal instructions regarding flexibility in handling special cases and include such review in their current Buildings Division Manual. Meanwhile, BD has required their staff to comply with the internal instructions to give interim replies or replies within the specified time.

Our Comments

19. (a) It is not an easy task to verify the ownership of a building in general. However, BD should consider the special features of each case and verify the ownership wherever practicable to avoid misunderstanding or disputes.

(b) We do not accept BD’s reasoning for not responding to the OC and the complainant that they should have been aware of the ownership of the external walls.

(c) Throughout the investigation, BD had never revealed that it had given interim replies to the complainant. It was not until August 2002, when we asked BD to comment on our draft investigation report, that BD stated for the first time that interim replies to the complainant had been given. Nevertheless, it is undue delay to reply the complainant after a lapse of nine months.

Final Remarks

20. The Ombudsman has decided that the conclusion of this investigation report should stand and hopes that BD would implement the recommendations as early as possible.

Office of The Ombudsman
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